IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 1191 of 2004.

Reserved on: 23.04.2007.

Decided on: 15.05.2007.

Parvinder Kumar

… … Petitioner.

Versus

The General Manager & Another.

… … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the petitioners: **Mr. Chandranarayana Singh, Advocate.**

For the Respondents: **Mr. Rahul Mahajan, Advocate.**

Rajiv Sharma, Judge:

This petition is filed against the award passed by the Presiding Officer, H.P. Labour Court, Shimla on 2.1.2002.

The brief facts necessary for adjudication of this petition are that the State Government has made a reference to the H.P. Labour Court to the following effect:-

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Whether reporters of local papers may be allowed to see the judgment? No.

"Whether the termination of services of Shri Parvinder Kumar by the General Manager, M/s Suraj Industries Ltd., Sansarpur Terrace, Tehsil Dehra, District Kangra, H.P. without any proper enquiry is legal and justified and whether it is in accordance with the Standing orders as claimed by the employer, if not, to what relief, Shri Parvinder Kumar is entitled?"

In sequel to reference No.85 of 1997, the petitioner filed statement of claim before the learned Labour Court. As per the statement of claim filed on behalf of the petitioner he was appointed as Civil Supervisor by the Management through proper channel vide appointment letter dated 13.8.1993. He discharged his duties upto 23rd September, 1994. A show cause notice was issued to the petitioner on 29.8.1994 for his absence of 45 minutes. He filed reply to the show cause notice on 30.8.1994. The Management not being satisfied with the reply of the petitioner decided to conduct a domestic enquiry. The petitioner was suspended on 30th August, 1994.

The petitioner was issued a charge-sheet on 2nd September, 1994. The petitioner was dismissed from service vide letter dated 23rd September, 1994.

The Management in its written statement before the Labour Court has taken the preliminary objection that the petitioner was working as Supervisor and was drawing salary of more than Rs.1600/- per month and a number of persons were working under him and thus, he was not a workman under Section 2(s) of

the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

The gist of written statement filed by the Management besides taking preliminary objection was that the petitioner was not a workman and that he was appointed on probation and holding of domestic enquiry against him was not mandatory. The petitioner appeared before the Labour Court as PW-1 and has admitted that he was getting salary of Rs.3200/- per month. The petitioner has stated in his statement that he used to do all type of works such as measurement, digging, painting etc. and did not have the authority to sanction the leave and also to disburse the salary of the workmen. He further stated that no enquiry was conducted against him nor the list of witnesses was ever supplied to him alongwith documents. He has denied in cross-examination that he was discharging supervisory duties, though he has admitted that he did not demand the list of witnesses.

Mr. Suresh Kumar has appeared on behalf of the Management as RW-1 and has stated that the petitioner was civil Supervisor and his duties included supervision of workman. Mr. Suresh Kumar has stated further that the petitioner could hire and terminate the workmen, but in his cross-examination, he has admitted that he was not in a position to produce any such letter vide which the petitioner had appointed or terminated any person. Mr. Prithi Singh, who has appeared as RW-2 on behalf of the Management has stated that the petitioner was appointed in supervisory capacity.

I have gone through the record carefully and heard the parties.

The learned Labour Court has held that the petitioner was not a workman within the meaning of Section 2(s) of the Act.

It is evident from the statement of petitioner as PW-1 that his salary was Rs.3200/- per month and has also admitted that two masons and 12 beldars were provided to him for taking work from them. RW-1 Mr. Suresh Kumar has also stated that the petitioner's job was supervisory in nature. Shri Prithi Singh has also reiterated that the petitioner's job was supervisory and he used to supervise the work of beldars and mistaries (masons). The fact that the petitioner has been appointed as Supervisor and his salary was more than Rs.1600/- per month, the Labour Court has come to just conclusion that the petitioner could not be termed as workman under Section 2(s) of the Act. There is neither jurisdictional error nor procedural irregularity in the award dated 2nd January, 2002.

It is settled proposition of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the Labour Court. The Hon'ble Supreme Court has also held in **Indian Overseas Bank versus I.O.B. Staff Canteen Workers' Union and Another (2000) 4 SCC 245** that exercising the powers under Articles 226 and 227 of the Constitution, the interference with pure findings of facts and re-appreciation of the evidence is held to be impermissible. It was also held that even insufficiency of evidence or if another

view is possible is no ground to interfere with the findings of the Industrial Tribunal. Their Lordships have opined as under:-

> **"The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken."**

Consequently, the award dated 2nd January, 2002 is up-held and accordingly, this petition is dismissed with no order as to costs.

(Rajiv Sharma)
Judge

May 15, 2007
(sck).